

RAJEEV JAIN

VS.

UNITED PARCEL SERVICE

Respondent

AND

LIBERTY MUTUAL INSURANCE COMPANY

Insurance Carrier

ORDER

Claimant appeals from the Award of Administrative Law Judge Julie A. N. Sample dated July 21, 1998, wherein the Administrative Law Judge awarded claimant a 6 percent permanent partial disability to the body as a whole based upon the opinion of the treating physician, Dr. Lowry Jones, Jr.

APPEARANCES

Claimant appeared by her attorney, Keith L. Mark of Mission, Kansas. Respondent and its insurance carrier appeared by their attorney, Stephanie J. Warmund of Kansas City, Missouri. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

What, if any, is the nature and extent of claimant's injury and disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record, the Appeals Board makes the following findings of fact and conclusions of law:

The Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are accurate and appropriate, and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein.

The dispute in this matter centers around whether claimant's functional impairment should be based upon the opinion of Dr. Lowry Jones, Jr., the treating physician, or Dr. P. Brent Koprivica, claimant's hired expert. Dr. Jones found claimant to have suffered a 5 percent permanent partial impairment to the body as a whole based upon the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition. Dr. Koprivica, on the other hand, found claimant to have suffered a 15 percent permanent partial impairment to the body as a whole also based upon the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition. The Administrative Law Judge, in considering the opinions of both experts, found Dr. Jones, as the treating physician, to be the most credible and to have had the best opportunity to assess claimant's functional impairment. Work disability is not appropriate in this instance as claimant has returned to work for respondent performing the same job as before, at a comparable wage.

The difference between the opinions of Dr. Jones and Dr. Koprivica appears to hinge upon whether claimant experiences radiculopathy from the cervical disk problems diagnosed on the MRI scan. Dr. Jones described the MRI scan as showing a bulging disk rather than a herniated disk. It is noted the MRI report discusses a herniated disk but goes on to state that there is no impingement on the spinal cord or foraminal narrowing of the cervical spine. Dr. Jones described the distinction between a herniation and a bulge as involving whether there was an impingement upon the spinal cord. A bulge will not impinge upon the spinal cord, whereas a herniation is where the fragment actually pushes beyond the normal limits of the ligament and causes compression on the spinal cord or nerve root, encroaching on that space. The herniation can lead to radiculopathy. Dr. Koprivica testified that claimant had a herniation with impingement on the spinal cord, thus resulting in radiculopathy. The medical records do indicate any radiculopathy associated with this injury resolved as the result of the epidural injections administered to claimant.

In reviewing the totality of the medical evidence, the Appeals Board finds, based upon Dr. Jones' evaluation, that any radiculopathy had resolved as the result of the treatment provided to claimant. In addition, the Board finds that the MRI indicates no impingement on the spinal column or nerve root which would eliminate any radiculopathy from this particular injury. These findings would support the opinion of Dr. Jones that claimant suffered a 5 percent impairment to the cervical spine under the AMA Guides, Fourth Edition, Table 73, rather than the 15 percent as alleged by Dr. Koprivica.

In addition to the cervical spine impairment, there was a 1 percent whole body impairment to the shoulder which was never seriously in dispute and which the Appeals Board adopts from the Award of the Administrative Law Judge in granting claimant a 6 percent permanent partial general body disability, resulting from the injury of January 17, 1997.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Julie A. N. Sample dated July 21, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Keith L. Mark, Mission, KS
Stephanie J. Warmund, Kansas City, MO
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director